

E-filed 8/25/06
/s/ JH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSHUA A. GERSTEIN,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE

Defendant.

No. C-03-04893 RMW

ORDER GRANTING MOTION FOR LEAVE
TO FILE MOTION FOR
RECONSIDERATION AND SETTING
BRIEFING SCHEDULE

[Re Docket Nos. 69, 72]

On September 30, 2005 the court issued an order granting in part and denying in part the parties' cross-motions for partial summary judgment. Following the September 30, 2005 Order the government disclosed a "compilation" of data to plaintiff pursuant to plaintiff's Freedom of Information Act ("FOIA") request. Plaintiff finds the compilation inadequate. On January 10, 2006 plaintiff filed the present motion for leave to file a motion for reconsideration of the September 30, 2005 Order. Plaintiff's motion stems from his assertion that the compilation is not an adequate response to his FOIA request in that it did not include either the ancillary survey or other records that disclose the meaning of the coded column headings in the compilation. Thus, plaintiff seeks reconsideration of the determination in the September 30, 2005 Order that the government had made an adequate search for records responsive to plaintiff's FOIA request.

1 On June 8, 2006 plaintiff filed a notice supplemental material of the recent decision, *Judicial*
2 *Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141 (D.C. Cir. June 2, 2006). The government filed a
3 response noting, *inter alia*, that plaintiff improperly submitted argument with the notice. To the
4 extent the parties find that the additional authority noticed by plaintiff is applicable to the issue
5 raised by the motion for reconsideration, such arguments may be made in the additional briefings for
6 the motion for reconsideration.

7 The motion for reconsideration is granted. The court sets the following briefing schedule:

- 8 1. The government's opposition shall be filed by September 12, 2006, including
9 any analysis of *Judicial Watch, Inc.*;
- 10 2. Gerstein's reply shall be filed by September 26, 2006.
- 11 3. The matter will be submitted on the filing of the reply. No further hearing
12 shall be held, unless the court advises the parties that one is necessary. If a
13 hearing is necessary, it shall take place on October 20, 2006.

14
15 DATED: 8/25/06



16 RONALD M. WHYTE
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

1 **Notice of this document has been mailed to:**

2 **Plaintiff:**

3 Joshua Gerstein
4 814 Potrero Avenue
5 San Francisco, CA 94110

6 **Counsel for Defendant:**

7 Claire T. Cormier
8 United States Attorney's Office
9 Northern District of California, San Jose Branch
10 150 Almaden Boulevard
11 Suite 900
12 San Jose, CA 95113

13 Elizabeth J. Shapiro; Carlton Eric Greene
14 United States Attorney's Office, Civil Division
15 U.S. Department of Justice, Federal Programs Branch
16 Post Office Box 883
17 Washington, DC 20044

18 Alexander Kenneth Haas
19 United States Department of Justice
20 Federal Programs Branch
21 20 Massachusetts Ave., NW
22 Washington, DC 20530

23 **Dated:** _____

Chambers of Judge Whyte